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On Multilingualism and the International Legal Process

GLEIDER I HERNÁNDEZ*

INTRODUCTION

Substantial effort has been dedicated to understanding the different cultural and intellectual traditions that, for better or for worse, have infused international law with its contemporary character, and much faith is placed in the capacity for legal texts precisely to reflect human conceptual intention. Yet, the relationship between language and international law, unlike in many of the social sciences and humanities, has rarely formed the subject of thorough study.¹ Instead, most research focuses on how legal language can channel norms and values into human behaviour and on problems such as the plurilingual interpretation of treaties.²

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¹ There are exceptions, such as the discussion of language as a method of argumentation and rhetoric, most famously symbolised in Martti Koskenniemi's work (eg M Koskenniemi, *From Apology to Utopia: the Structure of International Legal Argument* (Cambridge, Cambridge University Press, reissue 2005)); see also M Koskenniemi, 'International Law in Europe: Between Tradition and Renewal' (2005) 16 *European Journal of International Law* 113. See also P Allott, 'Language, Method and the Nature of International Law' (1971) 45 *British Yearbook of International Law* 79. Some other materials which deal with the issue somewhat have been published in Société française pour le droit international (ed), *International Law and Diversity of Legal Cultures* (Paris, Pedone, 2008), in the context of a joint conference between the French and German Societies of international law in Nice, and the *International Law as Language for International Relations: Proceedings of the United Nations Congress on Public International Law (13-17 March 1995)* (The Hague, Kluwer Law International, 1996).

² See, eg M Sibert, *Traité du droit international public*, Vol II (Paris, Dalloz, 1951) 320; J Hardy, 'The Interpretation of Plurilingual Treaties by International Courts and Tribunals' (1961) 37 *British Yearbook of International Law* 72; A McNair, *The Law of Treaties* (Oxford, Clarendon Press, 1961) 432–35; S Rosenne,

The *problématique* is as follows. There are murmurs of dissatisfaction in the corridors of New York, Geneva and The Hague to the effect that current linguistic arrangements no longer reflect aspirations for a less Euro-centric, more universal international law. Under this argument, the widespread use of the English language in economic, political and institutional circles has divorced this language from its native speakers and allowed it to become a truly auxiliary international language. Thus, the use of French, historically the second international working language, would be reduced or altogether eliminated. This change would catalyse increased access for individuals who already struggle to master one foreign language, as the perceived ‘barrier’ of having to learn French would be eliminated. Already, that language has begun to be informally marginalised in favour of a unilingual working environment.

One can also see this trend in the international academy, where more and more published material is in English alone.³ Two small anecdotes might be of interest here. The

‘The Meaning of “Authentic Text” in Modern Treaty Law’ in R Bernhardt, WK Geck, G Jaenicke and H Steinberger (eds), *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte: Festschrift für Hermann Mosler* (Berlin, Springer Verlag, 1983) 759. A similar focus exists with regard to the drafting of multilateral treaties: see, eg International Law Commission ‘Preparation of Multilingual Treaties: Memorandum by the Secretariat’ UN Doc A/CN.4/187, in *Yearbook of the International Law Commission* Vol II (New York, United Nations, 1966) 104–11. As for the work of international organisations, see, eg UN Secretary General, *Multilingualism: Report of the Secretary-General*, UN Doc A/54/478 (New York, United Nations, 1999); E Kudryavtsev, and L-D Ouedraogo, *Implementation of Multilingualism in the United Nations System* JIU/REP/2002/11 (Geneva, United Nations, 2003); and CE King, AS Bryntsev and FD Sohn, *The Implications of Additional Languages in the United Nations System* JIU/REP/77/5, UN Doc A/32/237 (Geneva, United Nations, 1977). Cf P Reuter, *Droit international public* (Paris, PUF, 1968), 25–26: ‘[E]n l’absence d’une langue internationale, les règles internationales sont formulées dans une langue nationale; les termes de celle-ci sont justiciables d’un double lexique, l’un vers le droit national et il y a alors renvoi, l’autre vers le droit international. Le partage entre les deux cas n’est pas toujours effectué une fois pour toutes au départ; on voit souvent par un «développement» du droit international celui-ci édifier progressivement ses notions propres et les substituer à celles du droit national.’

³ An attempt to counter this was made in producing a French-language commentary to the UN Charter. As its editors explained, their commentary ‘comble une lacune car il constitue le premier commentaire systématique issu de l’école de pensée française ... Nous disposions jusqu’à présent des analyses en langue anglaise.’ Avant-propos de JP Cot and A Pellet, *La Charte des Nations Unies*, 3rd edn (Paris, Economica, 2005) ix; see also J Perez de Cuellar, préface in *ibid.*, v. A notable exception to this tendency is O Corten and P Klein (eds), *Convention de Vienne sur le droit des traités — Commentaire article par article* (Bruxelles, Bruylant,

European Journal of International Law, originally publishing in both French and English, explains: ‘the decision to publish exclusively in English is based on the fact that it enables us to reach the widest possible readership, in view of the ever-growing number of Europeans and others for whom English is the principal second language.’⁴ More recently, the French and German Societies of International Law published the proceedings of a colloquium jointly held in Nice, which focused on cultural diversity and international law. The francophone participants presented in French; everyone else, including native German-speakers, presented in English.⁵

This phenomenon has significant repercussions for international law, however. It cannot be said that the impact of any change to the current linguistic settlement would not be limited to increasing the universalism of international law; it would in fact engender several concerns, three of which merit mention.

First, language does not merely reflect patterns of usage based on economic, political, or social trends, especially in a discipline with the universalist aspirations of international law. The language used by an individual carries the full weight of national traditions, of intellectual histories, and of differing cultural interpretations. Moreover, the interpretation of legal texts rests on epistemic and semantic factors, which requires the translation of a legal idea into language.⁶ Sometimes the drafting of the legislative or judicial text rests upon the verbalisation of legal concepts that previously had no linguistic expression. Although there is a careful drafting process whereby differing viewpoints are reconciled, international legal processes do not begin and end with the creation of law, but rather, with its interpretation, and it is here where an entirely different facet of the complex relationship between languages

2006), which came out in French first. However, an English version had just been finalised by Oxford University Press as this study went to press.

⁴ www.ejil.org/about/index.php.

⁵ At that conference where the presentation leading to this study was delivered, 51 of the 59 panellists presented in English; eight presented in French.

⁶ R MacDonald, ‘Legal Bilingualism’, (1997) 42 *McGill Law Journal* 119, 147. MacDonald’s writing specifically relates to the Canadian legal framework.

and international law come to the fore. International law, as a forum for the meeting of people from all corners of the globe, must accommodate all of these various phenomena.⁷

Second, specifically with regard to francophone legal thought, it has formed an integral part of the development of international law and structured around a civil law tradition shared with much of the globe. To eliminate any and all use of French would gradually divorce international law from an essential part of its heritage. This is not nostalgia: much like the transition from the Arabic script to the Latin alphabet precluded younger generations of Turkish-speakers from reading the work of their progenitors without translation, so the elimination of French from international legal discourse constitutes a shift, the consequences of which are already being felt. Official marginalisation would only accelerate this tendency.

Third, it behoves international society carefully to consider the loss of the pluralist safeguard which multiple languages provide. Multilingualism reduces the temptation of many domestic lawyers to transpose domestic legal principles from their own national legal system. Thus, the substitution or addition of international languages alongside English and French, such as Spanish, Arabic or Chinese, has been suggested. However, much like adding additional members to the Security Council, substitution or addition raise a whole series of issues, which obfuscate the problems with the contemporary arrangement: instead of increasing access to the international legal process to as many participants as possible, it elevates only certain groups and in fact increases the hurdles for others. This reality has the opposite effect of any intended reform, as the challenge remains to re-conceptualise existing structures so as to make them more democratic, as opposed to simply updating international law to better reflect contemporary power structures.

International law, by its very nature, requires the interaction of people educated in different legal traditions, hence the importance of language in that framework. The interfacing of these legal traditions,⁸ coupled with the differences in perception of

⁷ T Kleinlein, 'The Language of Public International Law' in Société française pour le droit international (ed), *International Law and Diversity of Legal Cultures* (Paris, Pedone, 2008) 199, provides an exhaustive survey of some of the major approaches to law and linguistic theory.

⁸ By 'legal culture', a helpful definition is proffered by AJ Arnaud (ed), *Dictionnaire encyclopédique de théorie et de sociologie du droit*, 2nd edn (Paris, LGDJ, 1993) 141: 'les valeurs et les attitudes qui lient le

international law and the role of law more generally, makes an important contribution to debates concerning the role and function of international law. For this reason, this study will focus on a relatively narrow aspect of the field, namely the languages of international adjudication and legislation, and, when pertinent, the question of languages in the international adjudicative process. It is here that treaty interpretation, as a matter of law and not as a matter of obligations, takes place; it is here that a disproportionate share of the development of the law occurs; and it is here that the specific question of how legal cultures transpose their principles and approaches to the international legal plane arises. This study should therefore be read purely as a response to the movement towards English as a *lingua franca* of international law.

HISTORICAL DEVELOPMENT

A brief history on the emergence of diplomatic languages is in order. As is well known, Latin was the original diplomatic language in the West, even used orally during the Congress of Westphalia, although by that point French had made inroads and was the second language for oral communication.⁹ By the Congress of Nijmegen,

[L]’on s’aperçut du progrès que la langue française avait fait dans les pays étrangers, car il n’y avait point de maison d’ambassadeurs où elle ne fut presque aussi commune que leur langue naturelle. ... pendant tout le cours des négociations de la paix, il ne parut presque que des écritures françaises, les étrangers aimant mieux s’expliquer en français dans leurs mémoires publics que d’écrire dans une langue moins usitée que le français.¹⁰

The language of diplomacy had shifted earlier than the language of treaties, which until the eighteenth century remained—with some exceptions—Latin, when French became

système dans un ensemble, et qui déterminent la place du système juridique dans la culture de la société considérée comme un tout.’

⁹ See generally JB Scott, *Le français: langue diplomatique moderne* (Paris, Pedone, 1934); R Jennings and A Watts (eds), *Oppenheim’s International Law*, 9th edn (Longman, London 1992) vol I, 1054–55; see also A Leriche, ‘Les langues diplomatiques à l’Organisation des Nations Unies’ (1953) 31 *Revue de droit international de sciences diplomatiques et politiques* 45, 45.

¹⁰ V Williams, ‘Les méthodes de travail de la diplomatie’, (1924) 4 *Recueil des Cours de l’Académie de Droit International* 225, 262.

ascendant.¹¹ This was an important shift for international law, from the use of a language which enjoyed no connection with a contemporary society towards a language very much attached to a contemporary society (the country of France, as well as, to a certain extent, the upper classes of European society).

The Versailles Conference and the Covenant of the League of Nations, 1919

The shattering of that temporary French linguistic hegemony over international relations came with the Treaty of Versailles, drafted in two ‘equally authentic languages’, English and French, and with the emergence of English as a co-official language of the League of Nations. The question was discussed during the two sessions of 15 January 1919,¹² and only after long debates about the rank and prestige of the two languages could it be agreed upon that both versions would have equal status.¹³ For the English language, it was a breakthrough of sorts to attain the same level of equality as French in the Covenant of the League, which was the first constitutive instrument of a world-wide international organisation.

Pichon, Foreign Minister of France, had suggested French as the sole official language of the Versailles Conference, stressing the need for a common language for all, which could meet the conditions of ‘logique, de clarté et de précision nécessair[e] et couramment intelligible pour toutes les parties’.¹⁴ Lloyd George, of Great Britain, opposed this request, not because of any intrinsic problem with the French language itself, but because the proportion of the world’s population which spoke English required that it be given equal

¹¹ Leriche, ‘Les langues diplomatiques’ (n 9), 46. See, eg Treaty of Utrecht, 1715 (Latin); Treaty of Rastatt, 1716 (French); Treaty of Vienna, 1736 (French); Treaty of Aix-la-Chapelle, 1748 (French); Final Act of the Congress of Vienna, 1815 (French). For the latter two documents, an express reservation was entered to the effect that the use of French for those treaties was not a valid precedent for the future of French as a diplomatic language, although that particular phrase was not found in subsequent treaties.

¹² See US Department of State, *The Paris Peace Conference, 1919, Papers relating to the Foreign Relations of the United States* (Washington, US Government Printing Office, 1943) vol III (15 January 1919), 553–61.

¹³ M Hilf, ‘Article 111’, in B Simma (ed), *The Charter of the United Nations: A Commentary*, 2nd edn (Oxford, Oxford University Press, 2002) 1379, 1380.

¹⁴ US Department of State, *The Paris Peace Conference* (n 12), 553–61.

rank with French.¹⁵ Discussions ended fruitlessly, and in fact the Versailles Conference ended up opening bilingually, with delegates expressing themselves in English and French. By way of a decision of the Supreme Council (Great Britain, France, the United States and Italy), and with no consultation of the plenary Conference, Article 440 of the Treaty of Versailles stipulated that both English and French versions were considered equally authentic.

James Brown Scott vehemently criticised the Versailles Conference as ‘la Conférence des Ignorants à Paris, en 1919’ for its use of both English and French,¹⁶ and lauded the Conference leading to the French-only Treaty of Lausanne of 1923 as an end to the ‘petit interrègne de l’ignorance ... le français recommence sa mission intellectuelle.’¹⁷ Nevertheless, it was evident that the end of the First World War had led to the abandonment of French as the sole international legal language. In the inter-war period, treaty practice fragmented further, with an emerging trend for states to conclude bipartite treaties in their own language, in a conflicting practice that did not give primacy to either English or French.¹⁸

The Permanent Court of International Justice, 1922

¹⁵ See *ibid* 554. He invoked the population of the United States (100 million at the time) and the population of India (over 300 million at the time); the latter were said to ‘all understand’ the language. He invoked the examples of Canada and South Africa as jurisdictions with two official languages to demonstrate that it was indeed feasible.

¹⁶ Scott, *Le français* (n 9), 319, 139. Scott makes an unusual argument, that the use of French as a diplomatic language had become so entrenched in the period leading up to 1919 that its use had acquired the status of a customary norm, *ibid* 13. This is surely untenable: the *opinio juris* for this norm was lacking, given the repeated invocation of the article denying the use of French any precedential value, such as that contained in the *Final Act of the Congress of Vienna*. See also Jennings and Watts, *Oppenheim’s International Law* (n 9), 1054, where it is stated that the choice of French prior to the 1919 Peace Conferences was a ‘usage of diplomacy only, and not a rule of international law’.

¹⁷ *ibid*.

¹⁸ MO Hudson, ‘Languages Used in Treaties’, (1932) 26 *American Journal of International Law* 368, 370–72. See also H Roumiguère, *Le français dans les relations internationales* (Berkeley, University of California Press, 1926); S Gaselee, *The Language of Diplomacy* (Cambridge, Bowes & Bowes, 1939).

The first initiatives in international dispute settlement were flexible and granted considerable deference to states.¹⁹ It was with the emergence of a permanent standing court where the question of a common language for judges and parties became an issue. At the Tenth Session of the Council of the League, where the question of a permanent Court was discussed,²⁰ Lord Balfour explained the reasoning for having both languages in the following terms:

English and French corresponded with two great legal traditions, one of which was founded on Roman law and the other upon the English Common Law ... A great part of the world to-day employed the English language or made use of English in its foreign relations.²¹

This suggestion was ignored by the 1920 Advisory Committee of Jurists. After a brief flirtation with the idea that the language of the Court be tied to its seat,²² the Committee proposed in its draft Article 37 for the Statute of the Permanent Court, in conformity with the 'Five-Power Plan'²³ that its official language should be French, while also citing the importance of a common language of communication:

[T]he permanence of the language must be an outward sign of the permanence of the Court. It would be absurd to allow each of 15 to 20 judges to express himself in a different language. It

¹⁹ Both the 1899 and 1907 Hague Conferences conducted their proceedings in French: see Scott, *Le français* (n 9) 112, and both the resulting Hague Convention for the Pacific Settlement of International Disputes, 1899 and the Hague Convention for the Pacific Settlement of International Disputes, 1907, reprinted in S Rosenne, *The Hague Peace Conferences of 1899 and 1907 and International Arbitration: Reports and Documents* (The Hague, TMC Asser Press, 2001), provide that the authoritative text of the Convention is the French version. They differ in how the parties may use language in their arbitrations: Art 38 of the 1899 Convention provides that the tribunal decides on the choice of languages to be used by itself and to be authorised for use before it, whilst Art 52 of the 1907 Convention provides that the *compromis* between the parties defines, if there is occasion, the language it will use and the languages the employment of which shall be authorised for use before the Tribunals.

²⁰ League of Nations, *Procès-verbal of the 10th Session of the Council*, League of Nations Doc 20/29/16 (Brussels, 20–28 October 1920), meeting of 27 October 1920, Annexes 118a–18b.

²¹ League of Nations, *Documents Concerning the Action Taken by the Council of the League of Nations under Article 14 of the Covenant and the Adoption by the Assembly of the Statute of the Permanent Court* (Geneva, 1921) 42.

²² Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee* (The Hague, Van Langenhuysen Brothers, 1920), 732: Bevilacqua proposed that 'the official language of the Court shall be that of the town in which it is situated'.

²³ The proposal for a unilingual court was adopted unanimously, *ibid* 666. Only one of the Five Neutral Powers (Denmark, the Netherlands, Norway, Sweden and Switzerland) has French as an official language.

would be impossible to allow parties to come before the judges and use a language that they, the judges, did not understand. A Court composed of all the nations of the World would thus become a Court of all tongues.²⁴

The work of the Committee was almost exclusively in French, as can be seen in the preface to the PCIJ *procès-verbaux*: ‘As all the members of the Committee, with the exception of Mr. Elihu Root, spoke in the French language, the English text of the *procès-verbaux* is to be looked upon as a translation, except in so far as concerns the speeches and remarks of Mr. Root.’²⁵ However, before the League Council, Lord Balfour forcefully objected to this proposed unilingualism:

I do not think that this, quite apart from the merits of the case, could be accepted until America joined the League, and had an opportunity of officially expressing her opinion on the subject. Apart from American opinion, it has to be observed that the Treaty of Versailles puts the two languages on an equality; and that in every instrument issuing out of the Treaty of Versailles this equality is maintained. The League of Nations itself carries on its business in French and English; and the English is not regarded as a mere translation of the French, but is treated as of equal authority. It would seem unfortunate to make an exception in respect to the Permanent Court; and I have no doubt that my Government would regard any such exception with the greatest disfavour.²⁶

Viscount Ishii of Japan supported this view.²⁷ Upon the moment of the Council’s vote on the official languages of the Court, the bilingual proposal of Mr Caclamanos was retained, with Mr Bourgeois (France) abstaining.²⁸

The Treaty of Versailles and the drafting of the PCIJ Statute heralded a new period for international relations, where English and French were to co-exist. The substantial

²⁴ *ibid* 99. The 1907 Court of Arbitral Justice project had left the question of language open.

²⁵ *ibid* at Préface, iv.

²⁶ Note on the Permanent Court of International Justice submitted by Mr Balfour to the Council of the League of Nations, Brussels, October 1920, contained in League Documents (n 21), 39; League of Nations Documents, Official Records of the First Assembly, Committees, vol I, 512.

²⁷ League, *Documents*, *ibid* 42; League Council, 10th session, 20–21. When this proposal was adopted, it was stipulated that, to avoid problems of linguistic concordance, the Court should specify which linguistic version would be authoritative, *ibid* 44–45.

²⁸ MO Hudson, *The Permanent Court of International Justice (1920–1942)* (New York, Garland Publishing, 1972) 196. A proposal by Spain that a language expressly consented to by both parties should be accepted in a given case was rejected for the reason that it would be unfair to demand that judges master more than the two official languages: see League of Nations Documents, Official Records of the First Assembly, Commission Sessions, 305–306, 367.

development of international law by the Permanent Court is notable in this regard, as it struggled to maintain independence from either language group. To the extent that its institutional framework was retained for the present International Court, one can say that its experience was a success; however, outside the framework of international adjudication, there was a significant change in how international relations were to be conducted after the Second World War.

CONTEMPORARY INTERNATIONAL MULTILINGUALISM

The United Nations and Multilingualism

The San Francisco Conference also engendered vigorous debate as to the future working and official languages of the new organisation.²⁹ The French delegate proposed that English and French should be made the two official languages on a ‘base de complète égalité’ for the entirety of the Conference, thereby highlighting the ‘traditional’ role of French as a language of diplomacy and one of the ‘grandes langues de la civilisation’. The Chinese delegates advocated that, in the interest of time, English be the sole language of the Conference; conversely, the Honduran delegate declared that if French were given the status of working language, the same status should be accorded to Spanish. A compromise was suggested by the Canadian delegate, relating the experience of Canada’s House of Commons, where delegates could speak in either official language, with bilingual transcripts then issued.³⁰

The impasse was resolved by the Soviet representative, who suggested that Chinese, English, French, Russian, and Spanish be made the official languages (in contradistinction with the working languages, English and French) of the United Nations. This compromise led

²⁹ See generally United Nations Information Organisations, *Documents of the United Nations Conference on International Organisation* Doc 1 (English) G/1 (1945) vol XXVII, DC/4, 42 *et seq* (26 April 1945).

³⁰ Since the San Francisco Conference, the Canadian legal order has progressively moved towards full legal bilingualism, with most new federal legislation drafted in two original language versions, and bilingual courts and administrative agencies predominant: MacDonald, *Legal Bilingualism* (n 6), 127 lists a vast body of literature which focuses on the question of legal bilingualism in Canada. Furthermore, its legislative protection is uncontested: s 133 of the Constitution Act 1867, (the ‘British North America Act’) (UK), 30 & 31 Vict, c 3; the Official Languages Act (Canada), RSC 1985, c 31 (4th Supp); and the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act 1982 (Canada), being Sch B to the Canada Act 1982 (UK) 1982, c 11.

to Article 111, which did not specify that any languages were to be ‘official’, but designated the versions of the Charter in those languages as equally authentic. While a historical memory, distinction between the UN official and working languages is extremely important. Although documents were translated into the official languages, the idea that French and English would be the only ‘working languages’, thus maintaining their duopoly on international discourse, soon proved to be intolerable. A successful campaign by Latin American states led to the adoption of Spanish as a third working language in 1948;³¹ by 1973, Russian, Chinese, and Arabic had been added to the list, thereby obliterating the distinction between official and working languages and changing the nature of the debate.

What is most interesting is that the Charter is viewed as a juridical whole in those languages, and its interpretation never simply ignores the other official-language versions of the text but favours a multilingual approach.³² Yet, although the United Nations officially has six working languages, and the six UN languages appear to be used consistently in the drafting of multilateral treaties, the overwhelming use of English (and to a lesser extent French) has been noted within the organisation itself,³³ even though the six UN languages appear to be used consistently in the drafting of multilateral treaties.³⁴

It is true that, especially in treaty interpretation, the ‘equally authentic’ versions do not give priority to any particular language: the United Nations Charter, which was negotiated primarily in English and French, due to technical problems and the lack of simultaneous translation, assigns no particular importance to those two languages as the

³¹ Proposal for the Adoption of Spanish as One of the Working Languages of the General Assembly, UNGA Res 247 (III) (7 December 1948).

³² Hilf, ‘Article 111’ (n 13), 1380–81; but *cf* *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States) (Jurisdiction and Admissibility)* [1984] ICJ Rep 392, 405–06, where only the English and French-language versions of the Charter were considered by the Court.

³³ See UN Secretary General, *Multilingualism* (n 2).

³⁴ See, eg Rome Statute of the International Criminal Court (17 July 1998), 2187 UNTS 90, Art 128; United Nations Convention on Jurisdictional Immunities of States and their Property (2 December 2004), UN Doc A/59/508 (not yet in force), Art 33; United Nations Framework Convention on Climate Change, (9 May 1992), 1171 UNTS 107, 31.

‘working languages’ of the San Francisco Conference.³⁵ Moreover, multilingual treaty drafting has not necessarily affected the dominance of English in the Organisation’s work; it has been claimed that 90 per cent of the UN Secretariat’s work is in English.³⁶ What is really at issue is not so much which languages are meant to dominate, but the manner in which working languages reinforce a culture, a framework of legal reasoning, and the transposition of legal norms from the national to the international—and the process whereby that is realised, as that transposition is not merely of a concept, but of a message. In that regard, it is instructive to analyse the interpretation of the Charter versus the interpretation of the ICJ Statute in this regard.

Multilingualism and International Adjudication/Dispute Settlement

Expanding the official languages of what became the International Court of Justice was controversial, and revealed the ideas and major debates underlying the use of language at the United Nations. Preliminary discussions of the Committee of Jurists hosted by the American Secretary of State, Edward Stettinius Jr, were held exclusively in English,³⁷ and Green Hackworth’s original proposals called for the Committee to work exclusively in English, ‘in order to expedite the Committee’s work’.³⁸ The French delegate, Jules Basdevant, requested

³⁵ S Jaschek, ‘Deutsch als Sprache der Vereinten Nationen’, (1977) 25 *Vereinte Nationen* 18.

³⁶ See eg J Rios, ‘Les langues du droit international, risque ou avantage?’ in Société française pour le droit international (ed), *International Law and Diversity of Legal Cultures* (Paris, Pedone, 2008) 209 [hereinafter ‘Rios, ‘Les langues du droit international’’], 213, who claims that up to 90% of the work published by the Secretariat is in English. Cf with the practice of the European Union, where, despite some 20-odd official languages and three working languages (English, French and German), up to 68% of all its work is conducted in English. In 2008, the GA declared the Official Year of Languages: UN Doc A/61/L 56; see also GA Res 50/11, on Multilingualism in the United Nations, in preamble: ‘that the universality of the United Nations and its corollary, multilingualism, entail for each State Member of the Organization, irrespective of the official language in which it expresses itself, the right and the duty to make itself understood and to understand others.’ Interestingly, this French-led initiative was harshly criticised as ‘extending a current privilege at the expense of other linguistic groups that are currently operating in a situation of even greater hardship’, Delegate of New Zealand, UN Doc A/50/PV 49 (2 November 1995) 9. See also UN Doc A/RES/59/309 (22 June 2005).

³⁷ UNCIO *Documents* (n 29) vol XIV, 25–40.

³⁸ *ibid* 53–54. This might have been justified by the fact that on the following day, the US State Department delegates had to take the train to San Francisco to attend that Conference.

that French remain as a working language of the Committee, on the basis that the PCIJ Statute, drafted in both languages, would be the basis of the new Court's Statute; his proposal, 'eu égard à la forme spéciale [sic] des statuts', was unanimously approved by the Committee, especially as the Statute of the Permanent Court was adopted as the working document for the proposed Court.³⁹ Much of the Committee's work was done in both languages, and in particular, given that the Court's Statute was to be authentic in both languages, much of the work focused on the harmonisation of the texts.⁴⁰ This bilingual drafting process arguably improved the precision and clarity of the draft,⁴¹ what it certainly did was oblige a reconciliation by using the two languages which were the most commonly understood by all members of the Committee; because neither of the languages was completely familiar to all delegates, that bilingual process also encouraged the abstraction of the text from a particular mindset or a specific national legal tradition.⁴²

During the San Francisco Conference, there was no longer any question that French and English would be represented as official languages of the Court; rather, debate centred upon whether they would maintain their duopoly. Roberto Córdova of Mexico proposed the addition of Spanish as the third official language, which was roundly criticised.⁴³ The Soviets worried that it would pave the way for new demands; the Greek delegate, Mr Spiropoulos,

³⁹ *ibid*, 55–60.

⁴⁰ *ibid* 72–76, 122–34; 170–74; 187; 201; 219–23.

⁴¹ See eg MO Hudson, 'The New World Court' (1945) 24 *Foreign Affairs* 368.

⁴² As commented in M Tabory, 'The Addition of Arabic as an Official and Working Language of the UN General Assembly and at Diplomatic Conferences', (1978) 13 *Israel Law Review* 391, 391: 'It has been pointed out that the process of multilingual drafting, or even simple translation, may at times shed added light upon a formulation or raise questions which would not be anticipated if a single language were being used, and thus helps to produce a better text.' See generally M Tabory, *Multilingualism in International Law and Institutions* (Alphen aan de Rijn, Sijthoff and Noordhoff, 1980). Indeed, sometimes the clarity of intention cannot be presumed from either legislator or law-making body. When it comes to language, the Vienna Convention rules are singularly useless, as one cannot simply search for the 'clearest' meaning or the 'lowest common denominator' of overlapping between language versions; nor again can one simply lift the veil of equal authenticity and discard the language in which it was not originally drafted.

⁴³ M Kohen, 'Article 39' in A Zimmerman, C Tomuschat and K Oellers-Frahm (eds), *The Statute of the International Court of Justice: A Commentary* (Oxford, Oxford University Press, 2006), 837, 842.

expressed his preference for one official language, but as two were already established, there should be no increase or addition. Mr Córdova duly did not insist on his proposal,⁴⁴ although Ecuador formally proposed its inclusion.⁴⁵ In an interesting proposal, Sánchez de Bustamante of Cuba proposed two separate chambers for the Court, with one headquartered in Havana and having four official languages: Spanish, English, Portuguese, and French.⁴⁶ That arrangement ultimately also failed, in favour of preserving the two historical languages, an arrangement maintained to the present day.⁴⁷ Kohen's appraisal of the situation is succinct and briefly touches upon some of the major questions:

The choice of two languages instead of one for a Court of such an international character — being as it is, the principal judicial organ of the United Nations — must also be commended. The fact that those languages are French and English and not others is justified on the basis of tradition, their use as international languages and their recognition as representatives of two different linguistic groups. It was also a wise decision not to recognize other languages used within the UN system as official languages of the Court. This would have required extensive translations from, and into, different languages and would have complicated effective judicial action.⁴⁸

The approach ultimately adopted by the drafters of the ICJ Statute has broadly been followed by other major international courts, tribunals, and dispute-settlement bodies. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) Rules of Procedure explicitly designate English and French as their working languages.⁴⁹ Conversely, the Rome Statute of the International

⁴⁴ UNCIO, *Documents* (n 29) vol XIV, 171–72.

⁴⁵ *ibid* vol III, 413.

⁴⁶ *ibid* vol IV, 730; vol XVI, 438. These are the four official languages of the Pan-American Union, *ibid* vol I, 631.

⁴⁷ See *Military and Paramilitary Activities in and around Nicaragua* [1984] ICJ Rep 392, 405–406 (where it used the French version of the Statute because it was the broadest); *Conditions of Admission of a State to the United Nations (Article 4 of the Charter)* (Advisory Opinion) [1947–8] ICJ Rep 57, 63, 79, 86, and 110 *et seq* (where only the English and French versions of the Charter were used to establish that the texts could be interpreted together).

⁴⁸ Kohen, 'Article 39' (n 43) 848.

⁴⁹ Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, IT/32/Rev 38 (as amended on 13 June 2006), r 3; Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, ITR/3/REV 1 (as amended on 5 March 2008), r 3. Anecdotal evidence suggests that the ICTY works almost exclusively in English; the ICTR, in both languages.

Criminal Court (ICC) provides that English and French are the working languages of that institution,⁵⁰ despite several efforts to make Spanish or other official languages of the UN its working languages as well.⁵¹ Of the major international judicial/arbitral bodies, only the World Trade Organization's dispute-settlement mechanism includes Spanish also as a working language,⁵² which is the result of a process which began during the GATT rounds in 1960.⁵³

ARGUMENTS FAVOURING MULTILINGUALISM— UNDERSTANDING THE IMPORTANCE OF 'OFFICIAL LANGUAGES'

The Normative Aspects of Language

⁵⁰ The ILC's Draft Statute of 1994 provided for this with little commentary, at its Art 18: see Report of the International Law Commission on the Work of its 46th Session, 2 May–22 July 1994, Supp No 10, UN Doc A/49/10 (1994), commentary to Art 50, 35. This was enshrined in Art 50, para 2 of the Rome Statute (n 34), and reg 39, sub-reg 1 of which requires that all Court filings must be in one of the working languages of the Court.

⁵¹ See D Tolbert and M Karagiannakis, 'Article 50' in O Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court*, 2nd edn (Munich, CH Beck, Hart, Nomos, 2008) 1025, 1026.

⁵² This is found in the final draft of the *Marrakech Agreement Establishing the World Trade Organization* (15 April 1994, 1867 UNTS 3, Art 2(c)(i) of which states that it is authentic in English, French, and Spanish. Under Art XXVI of GATT (pre-Uruguay Round), only English and French were conventionally enshrined. Interestingly, the WTO agreement has specific clauses requiring the harmonisation of the French text and the preparation of an authentic Spanish text. See World Trade Organisation, *Analytical Index: Guide to GATT Law and Practice*, Vol II (Geneva, WTO Publications, 1995), 915–16. One could also discuss the experience of the European Court of Justice and the European Court of Human Rights which, albeit regional bodies, exert significant normative influence. However, their very regionality distinguishes them somewhat from the classically international institutions mentioned above, and their particular patterns do not lend themselves to easy comparison.

⁵³ In 1960, during the 17th session, the representative of Uruguay urged, on behalf of the Spanish-speaking contracting parties, that the Spanish language be introduced on a progressive basis: see WTO, *Analytical Index*, (n 52), 915–16. 1961 saw simultaneous interpretation from Spanish into English and French during plenary meetings, and the beginning of translation of official documents into Spanish. The use of Spanish grew until 1983, at which point Spanish had attained the same status as English and French within GATT negotiations. The status of Spanish has been preserved for the WTO.

The influence of the official languages of international law is profound, in that it also privileges the transfer of concepts and ideas from municipal legal orders into international law. Where the laws, cases, and scholarly texts in international law are primarily in two languages, they employ the vocabulary and with it, the ideas channelled into international law through those two languages. Thus, because of this ‘vehicular’ status, the transfer of ideas from francophone and anglophone legal orders (especially, France, the United Kingdom and the United States) into international law is accelerated. Moreover, the linguistic proficiency of native speakers of those languages leads to their over-representation in international law-making bodies, especially amongst lawyers, judges, academics and international civil servants. With that representation also comes the infusion of ideas from within these institutions: languages become the ‘voie d’accès aux concepts et normes qu’il[s] véhicule[nt]’.⁵⁴

For these reasons, the choice of language to employ in legal instruments and even in adjudicatory proceedings has a profound influence on the development of that law: these go far beyond problems of interpretation and precision, but goes straight into the heart of legal analysis. To understand legal bilingualism as mere ‘textual duality’,⁵⁵ for example, does violence to the concept, as it presumes that all law can be fully expressed through language, and that language itself can act as universal discourse.⁵⁶ Furthermore, using two languages in tandem adds a new level of precision and clarity even in the original language. This is part of a constant process of reconciliation between both languages in an attempt to transform each official text into its own contribution to the whole, rather than as a mere translation from a *primus inter partes*. This process also arguably allows those select language versions to shed their tendency to adapt to a national legal tradition,⁵⁷ which would mitigate some of the problems of using living languages for international legal discourse.

⁵⁴ Rios (n 36) 214.

⁵⁵ MacDonald, ‘Legal Bilingualism’ (n 6) 128.

⁵⁶ *ibid* 128.

⁵⁷ For a thorough discussion about how national legal culture permeates conceptions of international law, see generally E Jouannet, ‘Les visions française et américaine du droit international: cultures juridiques et droit international’, in Société française pour le droit international (ed), *International Law and Diversity of Legal Cultures* (Paris, Pedone, 2008) 43.

Theories of Language and Communication

Language is inherently a tool for the communication of ideas and concepts. Already between two individuals, it is a challenge to employ the correct terms for the expression of such concepts—in many ways, all communication is the translation of thought into language.⁵⁸ This also applies to legal language, which harbours its own particularised vocabulary and idioms. This problem is magnified in international legal circles, where the interaction between states requires also the interaction between these individual vocabularies. Some common ground must be chosen, yet it is difficult to speak those ideas in our native tongue, much less translate them on the international plane. That problem of translation goes well beyond linguistic concordance; it is rooted in a problem of vocabulary:

[L]e même terme peut être pris dans un sens différent en droit international et dans un droit constitutionnel déterminé. ... Cette situation peut engendrer certaines confusions et l'idéal serait d'inventer, à l'usage du droit international, un vocabulaire propre. Mais cette voie qui a été suivie (par exemple en inventant sur le plan international des termes nouveaux et neutres comme 'acceptation') ne peut garantir la séparation des deux vocabulaires, car au bout d'un certain temps, les règles nationales peuvent recourir à ce même vocabulaire en le déformant.⁵⁹

It is true that legal culture in this regard depends not on ontological differences between legal orders, but instead on intellectual constructions; a common national legal culture springs from a shared history, intellectual heritage and cognitive structures more than on any inherent trait; this also means that there is a certain autonomy regarding legal culture as distinct from general culture.⁶⁰

Thus, as imperfect as shared communications are *within* a legal culture, there is a commonality which can be built upon. This imperfection grows in multi-cultural communities. Ideas, even under the best auspices, are not fully translatable into spoken or written; reliable multilingual accords are therefore even more difficult to reach, even when removing the problem of translation. The connotative aspects of language entail that words carry implied meanings, often associated with our cultural or national settings.

⁵⁸ MacDonald, 'Legal Bilingualism' (n 6) 123; see also G Steiner, *After Babel: Aspects of Language and Translation*, 2nd edn (Oxford, Oxford University Press, 1992), preface and *passim*.

⁵⁹ P Reuter, *Introduction au droit des traités* (Paris, Librairie Armand Colin, 1972), 68–69.

⁶⁰ D Jutras, 'Énoncer l'indicible: Le droit entre langues et traditions', (2000) 52 *Revue internationale de droit comparé* 781, 788.

Another theoretical point warranting consideration is the dependence of words on the larger questions of language itself—terminology only has meaning if it is interpreted in a context, as words themselves are not isolated entities. Their meaning depends on their relationship with the linguistic system as a whole, and it is the linguistic system behind a language which determines the value of a word and its place in a vocabulary. This argument is not only about lexicon or grammatical structure, but also about the philosophical, historical, scientific, and political contexts: words often contain unstated valuations or even encapsulate an entire theory: one need only invoke words such ‘normativity’, ‘dialectic’ and ‘essentialism’, to understand clearly that words carry with them cultural and contextual associations going well beyond a plain definition of the words themselves.

Why Multilingualism over Unilingualism?

The value of multilingualism (or even bilingualism) far outweighs that of unilingualism for this reason. For all the comforts of being able to express oneself in one’s own language, linguistic pluralism is important to the very process of communication within international affairs. The use of several equally authentic languages, both in the drafting as well as interpretive processes, ensures that one of the players, or a group of players, is denied the superior status as well as the manifold practical advantages derived from having its language imposed upon other players. Furthermore, it also creates a different discursive context: to engage dialogue in more than one language gives participants a ‘larger toolbox’ of expressive resources, if one will, to draw from when attempting to articulate concepts which transcend words.⁶¹ Thus, the question is not of ensuring equality between two or more languages, but

⁶¹ MacDonald, ‘Legal Bilingualism’ (n 6) 124 argues that bilingualism and multilingualism allow us to better engage ‘with the capacities and limitations of human language’. In support of this argument, he marshals K Hakuta, *Mirror of Language* (New York, Basic Books, 1986) ch 9, ‘Reflections on Bilingualism’, in support of an argument that ‘bi- or multi-lingual persons have insights about the connections between knowledge and language and between a symbol and the symbolized that escape unilinguals.’

rather, about being able to articulate a given concept in *any* language.⁶² This method of linguistic interaction can only be of benefit in an internationalised setting.⁶³

These, amongst other reasons, have grounded the fears of scholars with regard to the recent dominance of the English language within international circles.⁶⁴ This political trend has legal repercussions: it requires a re-casting of international discourse in the language of only one civilisation. Although cultural diversity is certainly important in itself, the focus of this study hinges on the legal and intellectual ramifications of unilingualism. The best guarantor of this diversity, at least from the adjudicatory perspective, is the continued multilingualism of international institutions.

It is indisputable that legal norms, especially as expressed in written texts, depend not only on the text itself but also on those who are entrusted with its interpretation. Furthermore, having several authentic versions of documents, all equally accessible and validly so, allows for rules and legal norms of law to be legitimately separated from its material support, namely, the text, the words, and the form. Concepts can continue to emerge from the imperfect vocabulary of language:

[L]'expression la plus complète de la norme passé par la combinaison des versions, par les possibilités distinctes qu'offrent les particularités et richesses métaphoriques de chaque

⁶² Jutras, 'Énoncer l'indicible', (n 60), 783.

⁶³ In the particular Canadian context, legal bilingualism has been lauded as having improved the quality of the law itself: see generally MacDonald, 'Legal Bilingualism' (n 6) and N Kasirer, 'Dire ou définir le droit', (1994) 28 *Revue juridique Thémis* 141.

⁶⁴ J Drohla, 'The Languages of Public International Law: Power Politics under the Cloak of Cultural Diversity?' in Société française pour le droit international (ed), *International Law and Diversity of Legal Cultures* (Paris, Pedone, 2008) 153, who cites the following: R Philippon, *Linguistic Imperialism* (Oxford, Oxford University Press, 1992); R Philippon, *English-Only Europe? – Challenging Language Policy* (London, Routledge, 2003); JW Tollefson, *Planning Languages, Planning Inequality* (London, Longman, 1991); S Wright, *Language Policy and Language Planning, From Nationalism to Globalisation* (Eastbourne, Palgrave/Macmillan, 2004); *Francophonie et Mondialisation*, Hèrmes 40 (2004); E Jayme, *Das Recht der lusophonen Länder, Tagungsreferate, Rechtsprechung, Gutachten* (Baden-Baden, Nomos, 2000). A more comparative study was undertaken by Y Ben Archour, *Le rôle des civilisations dans le système international* (Bruxelles, Bruylant, 2003), esp 188 *et seq.*

langue, ou même par la création de néologismes qui émergent du passage d'une langue à l'autre.⁶⁵

It is for this reason that multilingualism acquires a legal character and should in this sense be preserved, with the ancillary effect of promoting cultural diversity and the input of diverse groups into the continued development of international law.

Legal language is not immune from these phenomena; furthermore, international legal language, dependent as it is on the contact not only between individuals but between societies, rests on the intersection between these processes:

[L]e langage technique du droit n'est pas arrivé à un degré d'abstraction et de formalisation comparable à celui des mathématiques. Il conserve des liens étroits avec la langue courante et participe, dans une large mesure, à l'ambiguïté de celle-ci. Par ailleurs, le caractère normatif du droit s'adapte mal à la logique formelle et au calcul logique, conçus plutôt pour des jugements d'existence que pour des normes, qui, en elles-mêmes, ne sont ni vraies, ni fausses.⁶⁶

It is thus axiomatic that a living language brings with it the connotations and meanings ascribed to it by its native speakers, many of which are not explicit to the non-native speaker but are a part of its interpretation. In many respects, words and sentences lead one to 'connotations' of words, which can be understood as intellectual or affective references, extra-notional associations evoked or coloured by the words used.⁶⁷ This is where the importance of interpretation, and in particular multilingual interpretation, becomes evident, as the role of the techniques of exegesis or interpretation rests precisely in 'dissipating the myths which colour our language', and to 'make audible the silences which all speech and language brings forth.'⁶⁸ Interpretation, the act of will by which interpreters impose themselves upon their word, is the culmination of what MacDonald calls a 'tri-lectic' between author, text, and

⁶⁵ Jutras, 'Énoncer l'indicible' (n 60) 784.

⁶⁶ See H Wagner and K Haag, *Die Moderne Logik in der Rechtswissenschaft* (Bad Homburg, Gehlen Verlag, 1970), 12, 17.

⁶⁷ L Focsaneanu, 'Les Langues comme moyen d'expression du droit international', (1970) 16 *Annuaire français de droit international* 256, 258.

⁶⁸ See, eg M Foucault, *Les mots et les choses*, (Paris, Bibliothèque des Sciences humaines, Gallimard, 1966), 311. At ibid 310, he discusses the linguistic phenomenon of 'connotations': 'Devenu réalité historique épaisse et consistante, le langage forme le lieu des traditions, des habitudes muettes de la pensée, de l'esprit obscur des peuples; il accumule une mémoire fatale qui ne se connaît même pas comme mémoire.'

reader,⁶⁹ and each interpretive act commits interpreters to a future judgment shaped by past understanding, in so far as it is normative, going far beyond the very limited tri-lectic in question.

What is indeed important throughout this interpretive process is the status of the interpreter, whether it is a specialised, administrative agency, or a body with objective, general jurisdiction called upon to interpret. The importance of courts and their particular interpretive process is explained by Paul Reuter as follows:

[O]n a parfois estimé que les cours de justice s'arrêtaient volontiers à des interprétations littérales, stabilisant le sens des mots au contenu qu'ils pouvaient avoir au moment de l'établissement des règles, retirant finalement aux termes à interpréter toute pertinence, puisque ceux-ci pour la conserver auraient dû suivre l'évolution des faits et de la science.⁷⁰

The potential audience for international texts goes far beyond the restricted group of judges, lawyers, and legislators in national settings, and bears with it a much more cogent 'universalist' pretension than the audience for national legal texts.

Furthermore, it is misplaced to speak of 'clear texts': legal language, like all language, is laden with ambiguity, obscurity and indeterminacy. All these connotations of natural language continue to apply in legal settings, and therefore, any attempt at interpretation must consider all of these factors. It is one thing to interpret law; it is quite another to proceed with its application.⁷¹ Moreover, as Georges Scelle argued, interpretation is inherent in legal thought and cannot be discarded even when a text is 'clear':

Il ne faut pas confondre l'interprétation de la règle de droit avec son application. Les deux opérations qui paraissent parfois se confondre en pratique, se succèdent et restent logiquement distinctes. *Pour appliquer une règle de droit, il faut d'abord en déterminer la portée. Il n'y a donc pas d'application sans interprétation*, même lorsque l'énoncé de la règle est si clair que l'interprétation reste virtuelle.⁷²

⁶⁹ MacDonald, 'Legal Bilingualism' (n 6) 141.

⁷⁰ P Reuter, 'Quelques réflexions sur le vocabulaire du droit international' in *Mélanges offerts à Monsieur le doyen Louis Trotabas* (Paris, LGDJ, 1970) 423, 428.

⁷¹ As is pointed out rather baldly by C Rousseau, *Principes généraux du droit international public*, vol 1, (Paris, Pedone 1944), 672.

⁷² G Scelle, *Précis de droit des gens*, Part II (Paris, Sirey, 1934), 488 (emphasis added).

One can even make the argument that arbitrariness, incoherence and innate indeterminacy of language ‘fatally infects legal discourse’,⁷³ leading to formal statements of law posing as objective norms, confusing language and meaning as one, and assisting in the instrumentalisation of law as a coercive construct.⁷⁴ Max Weber’s aspiration of discourse as being reducible to ‘formal rationality’ and a possible authoritative standard for (Western) law is therefore somewhat misplaced.⁷⁵

CONCLUSION

[S]i d’un côté la langue exprime l’identité d’un système juridique dans les relations internationales d’un État, le droit international se forme sur la base d’une identité juridique mixte ou intégrée.⁷⁶

The importance of multilingualism in international law does not rest on maintaining cultural diversity, but rather, on the importance of accommodating legal pluralism within international legal discourse. There is far more at stake than cultural diversity and identity politics in ensuring that international law remains *international*. Besides the ‘loss of creativity in public international law ... of approaches emanating from national legal orders to address legal problems’,⁷⁷ there must be limitations on the continued moulding of international law to fit the vision of one particular legal order or group of legal orders. There is an indissoluble link between language and thought which makes consolidation into two languages poor, and one language a disastrous leap.

On a theoretical level, the form and substance inherent in understanding reality are lost by moving to one language. Understanding law through different languages and having them relate and interface with each other allows for diversity, be it cultural, intellectual or otherwise, to thrive. By perceiving international law through different languages and having

⁷³ MacDonald, ‘Legal Bilingualism’ (n 6) 125.

⁷⁴ This is what the Critical Legal Scholars focuses on, and although there an entire sub-discipline in international law is devoted to this argument, it is well beyond the scope of this study.

⁷⁵ M Weber and M Rheinstein (ed and translator) and E Shils (translator), *Max Weber on Law in Economy and Society* (Cambridge, MA, Harvard University Press, 1954).

⁷⁶ Rios (n 36) 212. See also Focsaneanu, ‘Les Langues comme moyen d’expression’ (n 67) 262.

⁷⁷ Drohla, *The Languages of Public International Law* (n 64), 174.

its interpretation occur in a multilingual context, one can perhaps better grasp the multiplicity of understandings that are lost in a uniformised linguistic setting.⁷⁸ In a system with the limited heritage but universalist pretensions of international law, these questions acquire heightened importance and consideration; and the multilingual prism, which avoids the elision between a legal norm and the texts of its expression, is perhaps the best method for its interpretation.

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⁷⁸ Rios (n 36) 209, 211. See also P Legrand, 'Sens et non sens d'un Code civil européen', (1996) 48 *Revue internationale de droit comparé* 779, 805: 'Imaginons les droits romanistes et ceux de la *common law* comme deux langages. Est-il si clair que la compréhension du réel serait favorisée si les diverses langues européennes étaient remplacées par une seule langue, fruit d'une union entre l'allemand, l'anglais et le français?' The article has been translated into English: see P Legrand, 'Against a European Civil Code', (1997) 60 *Modern Law Review* 44.

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